



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 03C of 09

The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

2009 LRB-0150

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

1 **SECTION 200.** 938.02 (13) of the statutes is amended to read:

2 938.02 (13) "Parent" means either a biological parent, a husband who has
3 consented to the artificial insemination of his wife under s. 891.40, or a parent by
4 adoption, including, in the case of an Indian juvenile, an adoption under tribal law
5 or custom. If the juvenile is a nonmarital child who is not adopted or whose parents
6 do not subsequently intermarry under s. 767.803, "parent" includes a person
7 acknowledged under s. 767.805 or a substantially similar law of another state or
8 adjudicated to be the biological father. "Parent" does not include any person whose
9 parental rights have been terminated.

10 **SECTION 201.** 938.02 (15) of the statutes is amended to read:

11 938.02 (15) "Relative" means a parent, stepparent, brother, sister, stepbrother,
12 stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd
13 cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding
14 generation as denoted by the prefix of grand, great, or great-great, whether by blood,
15 marriage, or legal adoption, or the spouse of any person named in this subsection,
16 even if the marriage is terminated by death or divorce. "Relative" also includes, in
17 the case of an Indian juvenile, an extended family member, as defined in s. 938.028
18 (2) (a), whether by blood, marriage, or adoption, including adoption under tribal law
19 or custom.

20 **SECTION 202.** 938.02 (15c) of the statutes is repealed and recreated to read:

21 938.02 (15c) "Reservation" means Indian country, as defined in 18 USC 1151,
22 or any land not covered under that section to which the title is either held by the
23 United States in trust for the benefit of an Indian tribe or individual or held by an
24 Indian tribe or individual, subject to a restriction by the United States against
25 alienation.

1 **SECTION 203.** 938.02 (18g) of the statutes is repealed.

2 **SECTION 204.** 938.02 (18j) of the statutes is created to read:

3 **938.02 (18j)** "Tribal court" means a court that has jurisdiction over juvenile
4 custody proceedings, and that is either a court of Indian offenses or a court
5 established and operated under the code or custom of an Indian tribe, or any other
6 administrative body of an Indian tribe that is vested with authority over Indian
7 juvenile custody proceedings.

8 **SECTION 205.** 938.028 of the statutes is repealed and recreated to read:

9 **938.028 Indian juvenile welfare. (1) DECLARATION OF POLICY.** In Indian
10 juvenile custody proceedings, the best interests of the Indian juvenile shall be
11 determined consistent with the federal Indian Child Welfare Act, 25 USC 1901 to
12 1963. It is the policy of this state to do all of the following:

13 (a) Cooperate fully with Indian tribes in order to ensure that the federal Indian
14 Child Welfare Act is enforced in this state.

doing all of the following: PP

1. Establishing

15 (b) Protect the best interests of Indian juveniles and promote the stability and
16 security of Indian tribes and families by ~~the establishment of~~ minimum standards
17 for the removal of Indian juveniles from their families and the placement of those
18 juveniles in out-of-home care placements that will reflect the unique value of Indian
19 culture.

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20 **(2) DEFINITIONS.** In this section:

21 (a) "Extended family member" means a person who is defined as a member of
22 an Indian juvenile's extended family by the law or custom of the Indian juvenile's
23 tribe or, in the absence of such a law or custom, a person who has attained the age
24 of 18 years and who is the Indian juvenile's grandparent, aunt, uncle, brother, sister,
25 brother-in-law, sister-in-law, niece, nephew, first cousin, 2nd cousin, or stepparent.

(b) "Indian juvenile custody proceeding" means a proceeding under s. 938.13 (4), (6), (6m), or (7) that is governed by the federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which an out-of-home care placement may occur.

for shelter care facility

(c) "Out-of-home care placement" means the removal of an Indian juvenile from his or her parent or Indian custodian for temporary placement in a foster home, treatment foster home, group home, ~~or~~ residential care center for children and youth or in the home of a guardian, from which placement the parent or Indian custodian cannot have the juvenile returned upon demand.

Insert 94-88

(3) JURISDICTION OVER INDIAN JUVENILE CUSTODY PROCEEDINGS. (a) *Exclusive*

tribal jurisdiction. 1. An Indian tribe shall have exclusive jurisdiction over any Indian juvenile custody proceeding involving an Indian juvenile who resides or is domiciled within the reservation of the tribe, except when that jurisdiction is otherwise vested in the state by federal law and except as provided in subd. 2. If an Indian juvenile is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence or domicile of the juvenile.

2. Subdivision 1. does not prevent an Indian juvenile who resides or is domiciled within a reservation, but who is temporarily located off the reservation, from being taken into and held in custody under ss. 938.19 to 938.21 in order to prevent imminent physical harm or damage to the Indian juvenile. The person taking the Indian juvenile into custody or the intake worker shall immediately release the Indian juvenile from custody upon determining that holding the Indian juvenile in custody is no longer necessary to prevent imminent physical damage or harm to the Indian juvenile and shall expeditiously ~~initiate an Indian juvenile custody~~

~~proceeding, transfer the Indian juvenile to the jurisdiction of the appropriate Indian~~

transfer the Indian juvenile to the jurisdiction of the appropriate Indian tribe, or initiate an Indian juvenile custody proceeding,

1 ~~tribe, or~~ restore the Indian juvenile to his or her parent or Indian custodian, as may
2 be appropriate.

3 (c) (b) *Transfer of proceedings to tribe.* In any Indian juvenile custody proceeding
4 under this chapter involving an out-of-home placement of an Indian juvenile who
5 is not residing or domiciled within the reservation of the Indian juvenile's tribe, the
6 court assigned to exercise jurisdiction under this chapter shall, upon the petition of
7 the Indian juvenile's parent, Indian custodian, or tribe, transfer the proceeding to the
8 jurisdiction of the tribe unless any of the following applies:

Insert 95-11

9 1. A parent of the Indian juvenile objects to the transfer.

10 2. The tribal court of the Indian juvenile's tribe declines jurisdiction.

11 3. The court determines that good cause exists to deny the transfer.

~~assigned to exercise jurisdiction under this chapter~~

12 (d) (c) *Declination of jurisdiction.* If the court determines that the petitioner in an
13 Indian juvenile custody proceeding has improperly removed the Indian juvenile from
14 the custody of his or her parent or Indian custodian or has improperly retained
15 custody of the Indian juvenile after a visit or other temporary relinquishment of
16 custody, the court shall decline jurisdiction over the petition and immediately return
17 the Indian juvenile to the custody of the parent or Indian custodian, unless the court
18 determines that returning the Indian juvenile to his or her parent or Indian
19 custodian would subject the Indian juvenile to substantial and immediate danger or
20 the threat of that danger.

21 (e) (d) *Intervention.* An Indian juvenile's Indian custodian or tribe may intervene
22 at any point in an Indian juvenile custody proceeding under this chapter.

23 (f) (e) *Full faith and credit.* The ~~court~~ ^{state} shall give full faith and credit to the public
24 acts, records, and judicial proceedings of any Indian tribe that are applicable to an
25 Indian juvenile custody proceeding to the same extent that the state gives full faith

1 and credit to the public acts, records, and judicial proceedings of any other
2 governmental entity.

3 (4) ~~INVOLUNTARY~~ COURT PROCEEDINGS. (a) *Notice*. In any involuntary proceeding
4 under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home care placement of a
5 juvenile whom the court knows or has reason to know is an Indian juvenile, the court
6 or party seeking the out-of-home care placement shall notify the Indian juvenile's
7 parent, Indian custodian, and tribe, by registered mail, return receipt requested, of
8 the pending proceeding and of their right to intervene in the proceeding. If the
9 identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot
10 be determined, that notice shall be given to the U.S. secretary of the interior in like
11 manner. The next hearing in the proceeding may not be held until at least 10 days
12 after receipt of the notice by the parent, Indian custodian, and tribe. On request of
13 the parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20
14 additional days to enable the requester to prepare for that hearing.

15 (b) *Appointment of counsel*. Whenever an Indian juvenile is the subject of a
16 proceeding under s. 938.13 (4), (6), (6m), or (7) involving the removal of the Indian
17 juvenile from his or her home or the placement of the Indian juvenile in an
18 out-of-home care placement, the Indian juvenile's parent, or Indian custodian, upon
19 a determination of indigency as provided in s. 938.23 (4), shall have the right to be
20 represented by court-appointed counsel. The court may also, in its discretion,
21 appoint counsel for the Indian juvenile under s. 938.23 (3) if the court finds that the
22 appointment is in the best interests of the Indian juvenile.

23 (c) *Examination of reports and other documents*. Each party to a proceeding
24 under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home care placement of an
25 Indian juvenile shall have the right to examine all reports or other documents filed

1 with the court upon which any decision with respect to the out-of-home care
2 placement may be based.

3 (d) *Out-of-home care placement; serious damage and active efforts.* The court
4 may not order an Indian juvenile who is in need of protection or services under s.
5 938.13 (4), (6), (6m), or (7) to be placed in an out-of-home care placement unless all
6 of the following occur:

*chosen in the order of preference listed in sub. (2)
(2) 1. to 4.*

7 1. The court finds by clear and convincing evidence, including the testimony
8 of one or more qualified expert witnesses, that continued custody of the Indian
9 juvenile by the parent or Indian custodian is likely to result in serious emotional or
10 physical damage to the juvenile.

as described in paragraph

11 2. The court finds by clear and convincing evidence that active efforts have been
12 made to provide remedial services and rehabilitation programs designed to prevent
13 the breakup of the Indian family and that those efforts have proved unsuccessful.

14 (5) INVALIDATION OF ACTION. Any Indian juvenile in need of protection or services
15 under s. 938.13 (4), (6), (6m), or (7) who is the subject of an out-of-home care
16 placement, any parent or Indian custodian from whose custody that Indian juvenile
17 was removed, or the Indian juvenile's tribe may move the court to invalidate that
18 out-of-home care placement on the grounds that the out-of-home care placement
19 was made in violation of sub. (3) or (4) or 25 USC 1911 or 1912. If the court finds that
20 those grounds exist, the court shall invalidate the out-of-home care placement and
21 order the Indian juvenile to be returned to his or her parent or Indian custodian.

22 (6) PLACEMENT OF INDIAN JUVENILE. (a) *Out-of-home care placement;*
23 *preferences.* Any Indian juvenile in need of protection or services under s. 938.13 (4),
24 (6), (6m), or (7) who is placed in an out-of-home care placement shall be placed in
25 the least restrictive setting that most approximates a family, that meets the Indian

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absence of (Hou. Title) contrary

in the absence of good cause to the contrary

juvenile's special needs, if any, and that is within reasonable proximity to the Indian

juvenile's home, taking into account those special needs. Subject to pars. (b) ~~and (c)~~ and (c)

in placing such an Indian juvenile in an out-of-home care placement, preference

shall be given to a placement in one of the following, in the order of preference listed:

1. The home of an extended family member of the Indian juvenile.

2. A foster home or treatment foster home licensed, approved, or specified by the Indian juvenile's tribe.

3. An Indian foster home or treatment foster home licensed or approved by the department, a county department, or a child welfare agency.

4. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian juvenile.

(b) *Tribal or personal preferences.* If the Indian juvenile's tribe has established, by resolution, an order of preference that is different from the order specified in par.

(a), the order of preference established by that tribe shall be followed so long as the placement is the least restrictive setting appropriate for the Indian juvenile's needs as specified in par. (a). When appropriate, the preference of the Indian juvenile or parent shall be considered, and, when a parent who has consented to the placement evidences a desire for anonymity, that desire shall be given weight, in determining the placement.

~~(c) *Departure for good cause shown.* The court or an agency may depart from the order of preference specified in par. (a) or (b) for good cause shown.~~

(c) *Social and cultural standards.* The standards to be applied in meeting the placement preference requirements of this subsection shall be the prevailing social and cultural standards of the Indian community in which the Indian juvenile's

in a county department or a child welfare
agency

1 parents or extended family members reside or with which the Indian juvenile's
2 parents or extended family members maintain social and cultural ties.

3 (d) ~~Report of placement.~~ The department of health and family services shall
4 maintain a record of each out-of-home care placement made of an Indian juvenile
5 who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), evidencing
6 the efforts made to comply with the placement preference requirements specified in
7 this subsection, and shall make that record available at any time on the request of
8 the U.S. secretary of the interior or the Indian juvenile's tribe.

9 (7) RETURN OF CUSTODY; REMOVAL FROM OUT-OF-HOME CARE PLACEMENT. If an
10 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
11 or (7) is removed from an out-of-home care placement for the purpose of placing the
12 Indian juvenile in another out-of-home care placement, a preadoptive placement,
13 as defined in s. 48.028 (2) (f), or an adoptive placement, as defined in s. 48.028 (2) (a),
14 the placement shall be made in accordance with this section and s. 48.028. Removal
15 of such an Indian juvenile from an out-of-home care placement for the purpose of
16 returning the Indian juvenile to the home of the parent or Indian custodian from
17 whose custody the Indian juvenile was originally removed is not subject to this
18 section.

19 (8) HIGHER STATE OR FEDERAL STANDARD APPLICABLE. The federal Indian Child
20 Welfare Act, 25 USC 1911 to 1963, supersedes this chapter in any Indian juvenile
21 custody proceeding governed by that act, except that in any case in which this
22 chapter provides a higher standard of protection for the rights of an Indian juvenile's
23 parent or Indian custodian ^{for tribe} than the rights provided under that act, the court shall
24 apply the standard under this chapter.

****NOTE: There are no provisions in s. 938.028 that are parallel to s. 48.028 (5) relating to voluntary placements and s. 48.928 (9) relating to adoptee information because there is no authority in ch. 938 for voluntary placements or adoption. That authority is found solely in ch. 48.

1 **SECTION 206.** 938.13 (intro.) of the statutes is amended to read:

2 **938.13 Jurisdiction over juveniles alleged to be in need of protection**
3 **or services.** (intro.) The Except as provided in s. 938.028 (3), the court has exclusive
4 original jurisdiction over a juvenile alleged to be in need of protection or services
5 which can be ordered by the court if any of the following conditions applies:

6 **SECTION 207.** 938.15 of the statutes is amended to read:

7 **938.15 Jurisdiction of other courts to determine legal custody.** Nothing
8 Except as provided in s. 938.028 (3), nothing in this chapter deprives another court
9 of the right to determine the legal custody juvenile by habeas corpus or to determine
10 the legal custody or guardianship of a juvenile if the legal custody or guardianship
11 is incidental to the determination of an action pending in that court. ~~But~~ Except as
12 provided in s. 938.028 (3), the jurisdiction of the court assigned to exercise
13 jurisdiction under this chapter and ch. 48 is paramount in all cases involving
14 juveniles alleged to come within the provisions of ss. 938.12 to 938.14.

15 **SECTION 208.** 938.185 (4) (title) of the statutes is amended to read:

16 938.185 (4) (title) ~~AMERICAN INDIAN JUVENILES.~~

17 **SECTION 209.** 938.185 (4) (intro.) of the statutes is amended to read:

18 938.185 (4) (intro.) Venue for a proceeding under s. 938.12 or 938.13 (12) based
19 on an allegation that an ~~American~~ Indian juvenile has committed a delinquent act
20 may not be in the county specified in sub. (1) (a), unless that county is specified in
21 sub. (1) (b) or (c), if all of the following circumstances apply:

22 **SECTION 210.** 938.185 (4) (a) of the statutes is amended to read:

1 938.185 (4) (a) At the time of the alleged delinquent act the juvenile was under
2 an order of a ~~tribe's~~ tribal court, other than a tribal court order relating to adoption,
3 physical placement or visitation with the juvenile's parent, or permanent
4 guardianship.

5 **SECTION 211.** 938.185 (4) (b) of the statutes is amended to read:

6 938.185 (4) (b) At the time of the alleged delinquent act the juvenile was
7 physically outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe
8 of the tribal court and any off-reservation trust land of either that Indian tribe or a
9 member of that Indian tribe as a direct consequence of a tribal court order under par.
10 (a), including a tribal court order placing the juvenile in the home of a relative of the
11 juvenile who on or after the date of the tribal court order resides physically outside
12 the boundaries of a reservation and off-reservation trust land.

13 **SECTION 212.** 938.19 (2) of the statutes is amended to read:

14 938.19 (2) NOTIFICATION OF PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN
15 CUSTODIAN. When a juvenile is taken into physical custody under this section, the
16 person taking the juvenile into custody shall immediately attempt to notify the
17 parent, guardian, ~~and~~ legal custodian, and Indian custodian of the juvenile by the
18 most practical means. The person taking the juvenile into custody shall continue
19 such attempt until the parent, guardian, ~~and~~ legal custodian, and Indian custodian
20 of the juvenile are notified, or the juvenile is delivered to an intake worker under s.
21 938.20 (3), whichever occurs first. If the juvenile is delivered to the intake worker
22 before the parent, guardian, ~~and~~ legal custodian, and Indian custodian are notified,
23 the intake worker, or another person at his or her direction, shall continue the
24 attempt to notify until the parent, guardian, ~~and~~ legal custodian, and Indian
25 custodian of the juvenile are notified.

1 **SECTION 213.** 938.20 (2) (ag) of the statutes is amended to read:

2 938.20 (2) (ag) Except as provided in pars. (b) to (g), a person taking a juvenile
3 into custody shall make every effort to release the juvenile immediately to the
4 juvenile's parent, guardian ~~or~~, legal custodian, or Indian custodian.

5 **SECTION 214.** 938.20 (2) (b) of the statutes is amended to read:

6 938.20 (2) (b) If the juvenile's parent, guardian ~~or~~, legal custodian, or Indian
7 custodian is unavailable, unwilling, or unable to provide supervision for the juvenile,
8 the person who took the juvenile into custody may release the juvenile to a
9 responsible adult after counseling or warning the juvenile as may be appropriate.

10 **SECTION 215.** 938.20 (3) of the statutes is amended to read:

11 938.20 (3) NOTIFICATION TO PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN
12 CUSTODIAN OF RELEASE. If the juvenile is released under sub. (2) (b) to (d) or (g), the
13 person who took the juvenile into custody shall immediately notify the juvenile's
14 parent, guardian, ~~and~~ legal custodian, and Indian custodian of the time and
15 circumstances of the release and the person, if any, to whom the juvenile was
16 released. If the juvenile is not released under sub. (2), the person who took the
17 juvenile into custody shall arrange in a manner determined by the court and law
18 enforcement agencies for the juvenile to be interviewed by the intake worker under
19 s. 938.067 (2). The person who took the juvenile into custody shall make a statement
20 in writing with supporting facts of the reasons why the juvenile was taken into
21 physical custody and shall give a copy of the statement to the intake worker and to
22 any juvenile 10 years of age or older. If the intake interview is not done in person,
23 the report may be read to the intake worker.

24 **SECTION 216.** 938.20 (7) (c) 1. of the statutes is amended to read:

1 938.20 (7) (c) 1. To a parent, guardian, ~~or~~ legal custodian, or Indian custodian,
2 or to a responsible adult if the parent, guardian, ~~or~~ legal custodian, or Indian
3 custodian is unavailable, unwilling, or unable to provide supervision for the juvenile,
4 counseling or warning the juvenile as may be appropriate; or, if the juvenile is 15
5 years of age or older, without immediate adult supervision, counseling or warning
6 the juvenile as may be appropriate.

7 **SECTION 217.** 938.20 (7) (d) of the statutes is amended to read:

8 938.20 (7) (d) If the juvenile is released from custody, the intake worker shall
9 immediately notify the juvenile's parent, guardian ~~and,~~ legal custodian, and Indian
10 custodian of the time and circumstances of the release and the person, if any, to whom
11 the juvenile was released.

12 **SECTION 218.** 938.20 (8) (a) of the statutes is amended to read:

13 938.20 (8) (a) If a juvenile is held in custody, the intake worker shall notify the
14 juvenile's parent, guardian, ~~and~~ legal custodian, and Indian custodian of the reasons
15 for holding the juvenile in custody and of the juvenile's whereabouts unless there is
16 reason to believe that notice would present imminent danger to the juvenile. The
17 parent, guardian, ~~and~~ legal custodian, and Indian custodian shall also be notified of
18 the time and place of the detention hearing required under s. 938.21, the nature and
19 possible consequences of the hearing, ~~and~~ the right to present and cross-examine
20 witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian
21 juvenile, the right to counsel under s. 938.028 (4) (b) regardless of ability to pay. If
22 the parent, guardian, ~~or~~ legal custodian, or Indian custodian is not immediately
23 available, the intake worker or another person designated by the court shall provide
24 notice as soon as possible.

25 **SECTION 219.** 938.21 (2) (title) of the statutes is amended to read:

1 938.21 (2) (title) PROCEEDINGS CONCERNING ~~RUNAWAY OR DELINQUENT JUVENILES.~~

2 **SECTION 220.** 938.21 (2) (ag) of the statutes is amended to read:

3 938.21 (2) (ag) Proceedings concerning a juvenile who comes within the
4 jurisdiction of the court under s. 938.12 or 938.13 ~~(7) or (12) or (14)~~ shall be conducted
5 according to this subsection.

6 **SECTION 221.** 938.21 (3) (ag) of the statutes is amended to read:

7 938.21 (3) (ag) Proceedings concerning a juvenile who comes within the
8 jurisdiction of the court under s. 938.13 (4), (6), (6m), or ~~(14)~~ (7) shall be conducted
9 according to this subsection.

10 **SECTION 222.** 938.21 (3) (am) of the statutes is amended to read:

11 938.21 (3) (am) The parent, guardian, ~~or legal custodian,~~ or Indian custodian
12 may waive his or her right to participate in the hearing under this section. After any
13 waiver, a rehearing shall be granted at the request of the parent, guardian, legal
14 custodian, Indian custodian, or any other interested party for good cause shown.

15 **SECTION 223.** 938.21 (3) (b) of the statutes is amended to read:

16 938.21 (3) (b) If present at the hearing, a copy of the petition or request shall
17 be given to the parent, guardian, ~~or legal custodian,~~ or Indian custodian, and to the
18 juvenile if he or she is 12 years of age or older, before the hearing begins. Prior notice
19 of the hearing shall be given to the juvenile's parent, guardian, ~~and legal custodian,~~
20 and Indian custodian and to the juvenile if he or she is 12 years of age or older under
21 s. 938.20 (8).

22 **SECTION 224.** 938.21 (3) (d) of the statutes is amended to read:

23 938.21 (3) (d) Prior to the commencement of the hearing, the court shall inform
24 the parent, guardian, ~~or legal custodian,~~ or Indian custodian of the allegations that
25 have been made or may be made, the nature and possible consequences of this

1 hearing as compared to possible future hearings, the right to present, confront, and
2 cross-examine ~~witnesses, and the right to present witnesses and, in the case of a~~
3 parent or Indian custodian of an Indian juvenile, the right to counsel under s.
4 938.028 (4) (b) regardless of ability to pay.

5 **SECTION 225.** 938.21 (3) (e) of the statutes is amended to read:

6 938.21 (3) (e) If the parent, guardian, or legal custodian, Indian custodian, or
7 the juvenile is not represented by counsel at the hearing and if the juvenile is
8 continued in custody as a result of the hearing, the parent, guardian, legal custodian,
9 Indian custodian, or juvenile may request through counsel subsequently appointed
10 or retained or through a guardian ad litem that the order to hold the juvenile in
11 custody be reheard. If the request is made, a rehearing shall take place as soon as
12 possible. An order to hold the juvenile in custody shall be reheard for good cause,
13 whether or not counsel was present.

14 **SECTION 226.** 938.21 (5) (d) 1. of the statutes is renumbered 938.21 (5) (d) and
15 amended to read:

16 938.21 (5) (d) If the court finds that any of the circumstances specified in s.
17 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing
18 under s. 938.38 (4m) within 30 days after the date of that finding to determine the
19 permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~
20 ~~agency responsible for preparing the permanency plan shall file the permanency~~
21 ~~plan with the court not less than 5 days before the date of the hearing.~~

22 **SECTION 227.** 938.21 (5) (d) 2. of the statutes is repealed.

23 **SECTION 228.** 938.21 (5) (d) 3. of the statutes is repealed.

24 **SECTION 229.** 938.23 (2g) of the statutes is created to read:

1 **938.23 (2g) RIGHT OF INDIAN JUVENILE'S PARENT OR INDIAN CUSTODIAN TO COUNSEL.**

2 Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6),
3 (6m), or (7) involving the removal of the Indian juvenile from his or her home or the
4 placement of the Indian juvenile in an out-of-home care placement, the Indian
5 juvenile's parent or Indian custodian, upon a determination of indigency as provided
6 in sub. (4), shall have the right to be represented by court-appointed counsel.

7 **SECTION 230.** 938.23 (3) of the statutes is amended to read:

8 **938.23 (3) POWER OF THE COURT TO APPOINT COUNSEL.** ~~Except as provided in this~~
9 ~~subsection, at~~ At any time, upon request or on its own motion, the court may appoint
10 counsel for the juvenile or any party, unless the juvenile or the party has or wishes
11 to retain counsel of his or her own choosing. ~~The court may not appoint counsel for~~
12 ~~any party other than the juvenile in a proceeding under s. 938.13.~~

13 **SECTION 231.** 938.23 (4) of the statutes is amended to read:

14 **938.23 (4) PROVIDING COUNSEL.** If a juvenile has a right to be represented by
15 counsel or is provided counsel at the discretion of the court under this section and
16 counsel is not knowingly and voluntarily waived, the court shall refer the juvenile
17 to the state public defender and counsel shall be appointed by the state public
18 defender under s. 977.08 without a determination of indigency. In any situation
19 under sub. (2g) in which a parent 18 years of age or over is entitled to representation
20 by counsel; counsel is not knowingly and voluntarily waived; and it appears that the
21 parent is unable to afford counsel in full, or the parent so indicates; the court shall
22 refer the parent to the authority for indigency determinations specified under s.
23 977.07 (1). In any other situation under this section in which a person has a right
24 to be represented by counsel or is provided counsel at the discretion of the court,
25 competent and independent counsel shall be provided and reimbursed in any

1 manner suitable to the court regardless of the person's ability to pay, except that the
2 court may not order a person who files a petition under s. 813.122 or 813.125 to
3 reimburse counsel for the juvenile who is named as the respondent in that petition.

4 **SECTION 232.** 938.235 (4) (a) 7. of the statutes is amended to read:

5 938.235 (4) (a) 7. Petition for relief from a judgment terminating parental
6 rights under s. 48.028 or 48.46.

7 **SECTION 233.** 938.24 (2r) (a) (intro.) of the statutes is amended to read:

8 938.24 (2r) (a) (intro.) If the intake worker determines as a result of the intake
9 inquiry that the juvenile is an ~~American~~ Indian juvenile who has allegedly
10 committed a delinquent act and that all of the following circumstances apply, the
11 intake worker shall promptly notify the clerk of the tribal court under subd. 1., a
12 person who serves as the tribal juvenile intake worker, or a tribal prosecuting
13 attorney that the juvenile has allegedly committed a delinquent act under those
14 circumstances:

15 **SECTION 234.** 938.24 (2r) (a) 1. of the statutes is amended to read:

16 938.24 (2r) (a) 1. At the time of the delinquent act the juvenile was under an
17 order of a ~~tribe's~~ tribal court, other than a tribal court order relating to adoption,
18 physical placement or visitation with the juvenile's parent, or permanent
19 guardianship.

20 **SECTION 235.** 938.24 (2r) (a) 2. of the statutes is amended to read:

21 938.24 (2r) (a) 2. At the time of the delinquent act the juvenile was physically
22 outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe of the tribal
23 court and any off-reservation trust land of either that Indian tribe or a member of
24 that Indian tribe as a direct consequence of a tribal court order under subd. 1.,
25 including a tribal court order placing the juvenile in the home of a relative of the

1 juvenile who on or after the date of the tribal court order resides physically outside
2 the boundaries of a reservation and off-reservation trust land.

3 **SECTION 236.** 938.24 (2r) (b) of the statutes is amended to read:

4 938.24 (2r) (b) If the intake worker is notified by an official of the Indian tribe
5 that a petition relating to the delinquent act has been or may be filed in tribal court,
6 the intake worker shall consult with tribal officials, unless the intake worker
7 determines under sub. (4) that the case should be closed. After the consultation, the
8 intake worker shall determine whether the best interests of the juvenile and of the
9 public would be served by having the matter proceed solely in tribal court. If the
10 intake worker determines that the best interests of the juvenile and of the public
11 would be served by having the matter proceed solely in tribal court, the intake
12 worker shall close the case. If the intake worker determines that the best interests
13 of the juvenile and of the public would not be served by having the matter proceed
14 solely in tribal court, the intake worker shall proceed under sub. (3) or (4).

15 **SECTION 237.** 938.243 (1) (e) of the statutes is amended to read:

16 938.243 (1) (e) The right of the juvenile to counsel under s. 938.23.

17 **SECTION 238.** 938.243 (3) of the statutes is amended to read:

18 938.243 (3) INFORMATION WHEN JUVENILE NOT AT INTAKE CONFERENCE OR HAS NOT
19 HAD CUSTODY HEARING. If the juvenile has not had a hearing under s. 938.21 and was
20 not present at an intake conference under s. 938.24, the intake worker shall notify
21 the juvenile, parent, guardian, and legal custodian, and Indian custodian as
22 appropriate of their basic rights under this section. The notice shall be given
23 verbally, either in person or by telephone, and in writing. The notice shall be given
24 in sufficient time to allow the juvenile, parent, guardian, ~~or~~ legal custodian, or Indian

1 custodian to prepare for the plea hearing. This subsection does not apply to cases of
2 deferred prosecution under s. 938.245.

3 **SECTION 239.** 938.255 (1) (cm) of the statutes is amended to read:

4 938.255 (1) (cm) If the petition is initiating proceedings ~~other than proceedings~~
5 ~~under s. 938.12, 938.125 or 938.13 (12)~~ under s. 938.13 (4), (6), (6m), or (7), whether
6 the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to
7 1963, and, if the juvenile may be subject to that act, the names and addresses of the
8 juvenile's Indian custodian, if any, and Indian tribe, if known.

9 **SECTION 240.** 938.255 (1) (cr) 1. a. of the statutes is amended to read:

10 938.255 (1) (cr) 1. a. The juvenile is an ~~American~~ Indian juvenile.

11 **SECTION 241.** 938.255 (1) (cr) 1. b. of the statutes is amended to read:

12 938.255 (1) (cr) 1. b. At the time of the alleged delinquent act, the juvenile was
13 under an order of a tribe's tribal court, other than a tribal court order relating to
14 adoption, physical placement or visitation with the juvenile's parent, or permanent
15 guardianship.

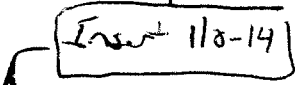
16 **SECTION 242.** 938.255 (1) (cr) 1. c. of the statutes is amended to read:

17 938.255 (1) (cr) 1. c. At the time of the delinquent act the juvenile was
18 physically outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe
19 of the tribal court and any off-reservation trust land of either that Indian tribe or a
20 member of that Indian tribe as a direct consequence of a tribal court order under
21 subd. 1. b., including a tribal court order placing the juvenile in the home of a relative
22 of the juvenile who on or after the date of the tribal court order resides physically
23 outside the boundaries of a reservation and off-reservation trust land.

24 **SECTION 243.** 938.255 (1) (cr) 2. of the statutes is amended to read:

1 938.255 (1) (cr) 2. If the statement under subd. 1. is included in the petition and
2 if the intake worker, district attorney, or corporation counsel has been notified by an
3 official of the Indian tribe that a petition relating to the delinquent act has been or
4 may be filed in tribal court with respect to the alleged delinquent act, a statement
5 to that effect.

6 **SECTION 244.** 938.255 (1) (g) of the statutes is created to read:

7 938.255 (1) (g) If the juvenile is or may be an Indian juvenile and is alleged to
8 come within the provisions of s. 938.13 (4), (6), (6m), or (7), reliable and credible
9 information showing that continued custody of the juvenile by the juvenile's parent
10 or Indian custodian is likely to result in serious emotional or physical damage to the
11 juvenile under s. 938.028 (4) (d) 1. and reliable and credible information showing that
12 the person who took the juvenile into custody and the intake worker have made
13 active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family
14 and that those efforts have proved unsuccessful. 

15 **SECTION 245.** 938.255 (2) of the statutes is amended to read:

16 938.255 (2) If any of the facts in sub. (1) (a) to (cr) ~~and~~, (f), and (g) are not known
17 or cannot be ascertained by the petitioner, the petition shall so state.

18 **SECTION 246.** 938.255 (4) of the statutes is amended to read:

19 938.255 (4) COPY TO JUVENILE, PARENTS, AND OTHERS. A copy of the petition shall
20 be given to the juvenile and to the parents, guardian, legal custodian and physical
21 custodian. If the juvenile is an Indian juvenile who is alleged to come within the
22 provisions of s. 938.13 (4), (6), (6m), or (7), a copy of the petition shall also be given
23 to the Indian juvenile's Indian custodian and tribe.

24 **SECTION 247.** 938.27 (3) (a) 1. of the statutes is amended to read:

1 938.27 (3) (a) 1. The court shall notify, under s. 938.273, the juvenile, any
2 parent, guardian, and legal custodian of the juvenile, any foster parent, treatment
3 foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile, and
4 any person specified in par. (b) or (d), if applicable, of all hearings involving the
5 juvenile under this subchapter, except hearings on motions for which notice must be
6 provided only to the juvenile and his or her counsel. If parents entitled to notice have
7 the same place of residence, notice to one constitutes notice to the other. The first
8 notice to any interested party, foster parent, treatment foster parent, or other
9 physical custodian described in s. 48.62 (2) shall be in writing and may have a copy
10 of the petition attached to it. Notices of subsequent hearings may be given by
11 telephone at least 72 hours before the time of the hearing. The person giving
12 telephone notice shall place in the case file a signed statement of the date and time
13 notice was given and the person to whom he or she spoke.

14 **SECTION 248.** 938.27 (3) (d) of the statutes is created to read:

15 938.27 (3) (d) If the petition that was filed relates to facts concerning a situation
16 under s. 938.13 (4), (6), (6m), or (7) involving an Indian juvenile, the court shall notify,
17 under s. 938.273, the Indian juvenile's Indian custodian and tribe and that Indian
18 custodian or tribe may intervene at any point in the proceeding.

19 **SECTION 249.** 938.27 (4) (b) of the statutes is amended to read:

20 938.27 (4) (b) Advise the juvenile and any other party, if applicable, of his or
21 her right to legal counsel regardless of ability to pay.

22 **SECTION 250.** 938.273 (1) (a) of the statutes of the statutes is amended to read:

23 938.273 (1) (a) Service of summons or notice required by s. 938.27 may be made
24 by mailing a copy of the summons and notice to the persons person summoned or
25 notified. If

1 ~~(ar)~~ Except as provided in par. (b), if the persons person, other than a person
2 specified in s. 938.27 (4m), ~~fail~~ fails to appear at the hearing or otherwise to
3 acknowledge service, a continuance shall be granted, ~~except as provided in par. (b),~~
4 and service shall be made personally by delivering to the persons person a copy of the
5 summons or notice; except that if the court determines that it is impracticable to
6 serve the summons or notice personally, ~~it~~ the court may order service by certified
7 mail addressed to the last-known ~~addresses~~ address of the persons person.

8 **SECTION 251.** 938.273 (1) (ag) of the statutes is created to read:

9 938.273 (1) (ag) In a proceeding under s. 938.13 (4), (6), (6m), or (7), service of
10 summons or notice required by s. 938.27 to an Indian juvenile's parent, Indian
11 custodian, or tribe shall be made as provided in s. 938.028 (4) (a).

12 **SECTION 252.** 938.273 (1) (b) of the statutes is amended to read:

13 938.273 (1) (b) The court may refuse to grant a continuance when the juvenile
14 is being held in secure custody, but if the court so refuses, ~~it~~ the court shall order that
15 service of notice of the next hearing be made personally or by certified mail to the
16 last-known address of the person who failed to appear at the hearing.

17 **SECTION 253.** 938.273 (1) (c) of the statutes is renumbered 938.273 (1) (c)
18 (intro.) and amended to read:

19 938.273 (1) (c) (intro.) Personal service shall be made at least 72 hours before
20 the hearing. Mail shall be sent at least 7 days before the hearing, ~~except that when~~
21 as follows:

22 1. When the petition is filed under s. 938.13 and the person to be notified lives
23 outside the state, the mail shall be sent at least 14 days before the hearing.

24 **SECTION 254.** 938.273 (1) (c) 2. of the statutes is created to read:

1 938.273 (1) (c) 2. When a petition under s. 938.13 (4), (6), (6m), or (7) involves
2 an Indian juvenile and the person to be notified is the Indian juvenile's parent,
3 Indian custodian, or tribe, the mail shall be sent so that it is received by the person
4 to be notified, or by the U.S. secretary of interior, at least 10 days before the time of
5 the hearing.

6 **SECTION 255.** 938.299 (6) (d) of the statutes is amended to read:

7 938.299 (6) (d) The court may stay the proceedings under this chapter pending
8 the outcome of the paternity proceedings under subch. IX of ch. 767 if the court
9 determines that the paternity proceedings will not unduly delay the proceedings
10 under this chapter and the determination of paternity is necessary to the court's
11 disposition of the juvenile if the juvenile is found to be in need of protection or services
12 or if the court determines that the paternity proceedings may result in a finding that
13 the juvenile is an Indian juvenile and in a petition by the juvenile's parent, Indian
14 custodian, or tribe for transfer of the proceeding to the jurisdiction of the tribe.

15 **SECTION 256.** 938.299 (9) (a) of the statutes is amended to read:

16 938.299 (9) (a) If a petition under s. 938.12 or 938.13 (12) includes the
17 statement in s. 938.255 (1) (cr) 2. or if the court is informed during a proceeding under
18 s. 938.12 or 938.13 (12) that a petition relating to the delinquent act has been filed
19 in a ~~tribe's~~ tribal court with respect to a juvenile to whom the circumstances specified
20 in s. 938.255 (1) (cr) 1. apply, the court shall stay the proceeding and communicate
21 with the tribal court in which the other proceeding is or may be pending to discuss
22 which court is the more appropriate forum.

23 **SECTION 257.** 938.299 (10) of the statutes is created to read:

24 938.299 (10) If at any point in a proceeding under s. 938.13 (4), (6), (6m), or (7)
25 the court determines that the juvenile is or may be an Indian juvenile, the court shall

1 provide notice of the proceeding to the juvenile's parent, Indian custodian, and tribe
2 in the manner specified in s. 938.028 (4) (a). The next hearing in the proceeding may
3 not be held until at least 10 days after receipt of the notice by the parent, Indian
4 custodian, and tribe. On request of the parent, Indian custodian, or tribe, the court
5 shall grant a continuance of up to 20 additional days to enable the requester to
6 prepare for that hearing.

7 **SECTION 258.** 938.30 (1) of the statutes is amended to read:

8 938.30 (1) TIME OF HEARING. Except as provided in this subsection and s.
9 938.299 (10), the hearing to determine the juvenile's plea to a citation or a petition
10 under s. 938.12, 938.125, or 938.13 (12) or (14), or to determine whether any party
11 wishes to contest an allegation that the juvenile is in need of protection or services
12 under s. 938.13 (4), (6), (6m), or (7) ~~or (14)~~ shall take place on a date which allows
13 reasonable time for the parties to prepare but is within 30 days after the filing of a
14 petition or issuance of a citation for a juvenile who is not being held in secure custody
15 or within 10 days after the filing of a petition or issuance of a citation for a juvenile
16 who is being held in secure custody. In a municipal court operated jointly by 2 or more
17 cities, towns or villages under s. 755.01 (4), the hearing to determine the juvenile's
18 plea shall take place within 45 days after the filing of a petition or issuance of a
19 citation for a juvenile who is not being held in secure custody.

20 **SECTION 259.** 938.30 (2) of the statutes is amended to read:

21 938.30 (2) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS; SUBSTITUTION.
22 At or before the commencement of the hearing under this section the juvenile and
23 the parent, guardian, ~~or legal custodian,~~ or Indian custodian shall be advised of their
24 rights as specified in s. 938.243 and shall be informed that the hearing shall be to the
25 court and that a request for a substitution of judge under s. 938.29 must be made

1 before the end of the plea hearing or is waived. Nonpetitioning parties, including the
2 juvenile, shall be granted a continuance of the plea hearing if they wish to consult
3 with an attorney on the request for a substitution of a judge.

4 **SECTION 260.** 938.30 (6) (a) of the statutes is amended to read:

5 938.30 (6) (a) If a petition is not contested, the court, subject to s. 938.299 (10),
6 shall set a date for the dispositional hearing which allows reasonable time for the
7 parties to prepare but is no more than 10 days from the plea hearing for a juvenile
8 who is held in secure custody and no more than 30 days from the plea hearing for a
9 juvenile who is not held in secure custody. If all parties consent the court may
10 proceed immediately with the dispositional hearing. If a citation is not contested, the
11 court may proceed immediately to enter a dispositional order.

12 **SECTION 261.** 938.30 (7) of the statutes is amended to read:

13 938.30 (7) CONTESTED PETITIONS OR CITATIONS; DATE FOR FACT-FINDING HEARING.
14 If the petition or citation is contested, the court, subject to s. 938.299 (10), shall set
15 a date for the fact-finding hearing that allows a reasonable time for the parties to
16 prepare but is no more than 20 days ~~from~~ after the plea hearing for a juvenile who
17 is held in secure custody and no more than 30 days ~~from~~ after the plea hearing for
18 a juvenile who is not held in secure custody.

19 **SECTION 262.** 938.305 of the statutes is amended to read:

20 **938.305 Hearing upon the involuntary removal of a juvenile.**

21 Notwithstanding other time periods for hearings under this chapter, if a juvenile is
22 removed from the physical custody of the juvenile's parent or guardian under s.
23 938.19 (1) (c) or (d) 5. without the consent of the parent or guardian, the court, subject
24 to s. 938.299 (10), shall schedule a plea hearing and fact-finding hearing within 30
25 days after a request from the parent or guardian from whom custody was removed.

1 The plea hearing and fact-finding hearing may be combined. This time period may
2 be extended only with the consent of the requesting parent or guardian.

3 **SECTION 263.** 938.31 (7) (a) of the statutes is amended to read:

4 938.31 (7) (a) At the close of the fact-finding hearing, the court, subject to s.
5 938.299 (10), shall set a date for the dispositional hearing that allows a reasonable
6 time for the parties to prepare but is no more than 10 days after the fact-finding
7 hearing for a juvenile in secure custody and no more than 30 days after the
8 fact-finding hearing for a juvenile not held in secure custody. If all parties consent,
9 the court may immediately proceed with a dispositional hearing.

10 **SECTION 264.** 938.315 (1) (a) 11. of the statutes is created to read:

11 938.315 (1) (a) 11. A continuance, not to exceed 20 days, granted at the request
12 of the parent, Indian custodian, or tribe of a juvenile who is or may be an Indian
13 juvenile to enable the requester to prepare for a proceeding under s. 938.13 (4), (6),
14 (6m), or (7) involving the juvenile.

15 **SECTION 265.** 938.315 (2) of the statutes is amended to read:

16 938.315 (2) CONTINUANCE FOR GOOD CAUSE. A continuance may be granted by
17 the court only upon a showing of good cause in open court or during a telephone
18 conference under s. 807.13 on the record and only for so long as is necessary, taking
19 into account the request or consent of the representative of the public under s. 938.09
20 or the parties, the request of a person specified in sub. (1) (a) 11., the interests of the
21 victims, and the interest of the public in the prompt disposition of cases.

22 **SECTION 266.** 938.32 (1) (d) 1. of the statutes is renumbered 938.32 (1) (d) and
23 amended to read:

24 938.32 (1) (d) If the court finds that any of the circumstances specified in s.
25 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing

1 under s. 938.38 (4m) within 30 days after the date of that finding to determine the
2 permanency plan for the juvenile. ~~The agency responsible for preparing the~~
3 ~~permanency plan shall file the permanency plan with the court not less than 5 days~~
4 ~~before the date of the hearing.~~

5 **SECTION 267.** 938.32 (1) (d) 2. of the statutes is repealed.

6 **SECTION 268.** 938.32 (1) (d) 3. of the statutes is repealed.

7 **SECTION 269.** 938.33 (4) (d) of the statutes is created to read:

8 938.33 (4) (d) In the case of a proceeding under s. 938.13 (4), (6), (6m), or (7),
9 if the agency knows or has reason to know that the juvenile is an Indian juvenile, a
10 description of any efforts undertaken to determine whether the juvenile is an Indian
11 juvenile; specific information showing that continued custody of the juvenile by the
12 parent or Indian custodian is likely to result in serious emotional or physical damage
13 to the juvenile, under s. 938.028 (4) (d) 1.; specific information showing that the
14 county department or agency primarily responsible for providing services to the
15 juvenile has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of
16 the Indian family and that those efforts have proved unsuccessful; a statement as to
17 whether the out-of-home care placement recommended is in compliance with the
18 order of placement preference under s. 938.028 (6) (a); and, if the recommended
19 placement is not in compliance with that order, specific information showing good
20 cause for departure from that order.

or, if applicable, (b)

21 **SECTION 270.** 938.335 (3j) of the statutes is created to read:

22 938.335 (3j) INDIAN JUVENILE; ACTIVE EFFORTS FINDING. At hearings under this
23 section involving an Indian juvenile who is the subject of a proceeding under s. 938.13
24 (4), (6), (6m), or (7), if the agency, as defined in s. 938.38 (1) (a), is recommending
25 placement of the Indian juvenile in a foster home, treatment foster home, group

s. 938.028(6)

1 home, or residential care center for children and youth or in the home of a relative
2 other than a parent, the agency shall present as evidence specific information
3 showing all of the following:

4 (a) That continued custody of the Indian juvenile by the parent or Indian
5 custodian is likely to result in serious emotional or physical damage to the Indian
6 juvenile under s. 938.028 (4) (d) 1.

7 (b) That the county department or agency primarily responsible for providing
8 services to the Indian juvenile has made active efforts under s. 938.028 (4) (d) 2. to
9 prevent the breakup of the Indian family and that those efforts have proved
10 unsuccessful.

11 (c) That the placement recommended is in compliance with the order of
12 placement preference under s. 938.028 (6) (a) or, if that placement is not in
13 compliance with that order, good cause for departing from that order.

14 **SECTION 271.** 938.345 (1m) of the statutes is created to read:

15 938.345 (1m) INDIAN JUVENILE; PLACEMENT PREFERENCES. (a) Subject to s.
16 938.028 (6) (b) ~~and~~, if the juvenile is an Indian juvenile who is in need of protection
17 or services under s. 938.13 (4), (6), (6m), or (7) and who is being placed in an
18 out-of-home care placement, as defined in s. 938.028 (2) (c), the court shall designate
19 one of the placements specified in s. 938.028 (6) (a) 1. to 4. as the placement for the
20 Indian juvenile, in the order of preference listed.

21 **SECTION 272.** 938.355 (2) (b) 6v. of the statutes is created to read:

22 938.355 (2) (b) 6v. If the juvenile is an Indian juvenile who is in need of
23 protection or services under s. 983.13 (4), (6), (6m), or (7) and who is placed outside
24 the home, a finding supported by clear and convincing evidence, including the
25 testimony of one or more qualified expert witnesses, that continued custody of the

1 Indian juvenile by the parent or Indian custodian is likely to result in serious
2 emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and a finding
3 supported by clear and convincing evidence as to whether the county department or
4 agency primarily responsible for providing services under a court order has made
5 active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family
6 and that those efforts have proved unsuccessful.

7 **SECTION 273.** 938.355 (2) (d) of the statutes is amended to read:

8 938.355 (2) (d) The court shall provide a copy of the dispositional order to the
9 juvenile's parent, guardian, legal custodian, or trustee and, if the juvenile is an
10 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
11 or (7), to the Indian juvenile's Indian custodian and tribe.

12 ~~**SECTION 274.** 938.355 (2c) (title) of the statutes is amended to read:~~

13 938.355 (2c) (title) REASONABLE EFFORTS AND ACTIVE EFFORTS STANDARDS.

14 ~~**SECTION 275.** 938.355 (2c) (c) of the statutes is created to read:~~

15 938.355 (2c) (c) When a court makes a finding under sub. (2) (b) 6v. as to
16 whether the county department or the agency primarily responsible for providing
17 services to an Indian juvenile under a court order has made active efforts under s.
18 938.028 (4) (d) 2. to prevent the breakup of the Indian family, the court's
19 consideration of active efforts shall include the considerations listed under par. (a)
20 1. to 5., whether visitation schedules between the Indian juvenile and his or her
21 parents were implemented, unless visitation was denied or limited by the court,
22 whether the order of preference for placement of the Indian juvenile under s. 938.028
23 (6) (a) was followed, and whether the services provided to the Indian juvenile and his
24 or her family were culturally responsive to their needs.

1 **SECTION 276.** 938.355 (2d) (c) 1. of the statutes is renumbered 938.355 (2d) (c)
2 and amended to read:

3 938.355 (2d) (c) If the court finds that any of the circumstances under par. (b)
4 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38
5 (4m) within 30 days after the date of that finding to determine the permanency plan
6 for the juvenile. ~~If a hearing is held under this subdivision, the agency responsible~~
7 ~~for preparing the permanency plan shall file the permanency plan with the court not~~
8 ~~less than 5 days before the date of the hearing.~~

9 **SECTION 277.** 938.355 (2d) (c) 2. of the statutes is repealed.

10 **SECTION 278.** 938.355 (2d) (c) 3. of the statutes is repealed.

11 **SECTION 279.** 938.355 (6) (an) 1. of the statutes is amended to read:

12 938.355 (6) (an) 1. If a juvenile who has violated a municipal ordinance, other
13 than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a
14 dispositional order imposed by the municipal court, the municipal court may petition
15 the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose
16 on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with
17 monitoring by an electronic monitoring system. A sanction may be imposed under
18 this subdivision only if, at the time of the judgment, the municipal court explained
19 the conditions to the juvenile and informed the juvenile of those possible sanctions
20 for a violation or if before the violation the juvenile has acknowledged in writing that
21 he or she has read, or has had read to him or her, those conditions and possible
22 sanctions and that he or she understands those conditions and possible sanctions.
23 The petition shall contain a statement of whether the juvenile may be subject to the
24 federal Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the juvenile may be

1 subject to that act, the names and addresses of the juvenile's Indian custodian, if any,
2 and tribe, if known.

3 **SECTION 280.** 938.355 (6) (b) of the statutes is amended to read:

4 938.355 (6) (b) *Motion to impose sanction.* A motion for imposition of a sanction
5 may be brought by the person or agency primarily responsible for the provision of
6 dispositional services, the district attorney or corporation counsel, or the court that
7 entered the dispositional order. If the court initiates the motion, that court is
8 disqualified from holding a hearing on the motion. Notice of the motion shall be given
9 to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian, and all
10 parties present at the original dispositional hearing. The motion shall contain a
11 statement of whether the juvenile may be subject to the federal Indian Child Welfare
12 Act, 25 USC 1911 to 1963 and, if the juvenile may be subject to that act, the names
13 and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

14 **SECTION 281.** 938.355 (6) (bm) of the statutes is created to read:

15 938.355 (6) (bm) *Indian juvenile; notice.* If the person initiating the motion
16 knows or has reason to know that the juvenile is an Indian juvenile who has been
17 found to be in need of protection or services under s. 938.13 (4), (6), (6m), or (7) or who
18 has been adjudged to have violated a civil law or ordinance, notice under par. (b) to
19 the Indian juvenile's parent shall be provided in the manner specified in s. 938.028
20 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian
21 custodian and tribe. No hearing may be held under par. (c) until at least 10 days after
22 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe. On
23 request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall
24 grant a continuance of up to 20 additional days to enable the requester to prepare
25 for the hearing.

1 **SECTION 282.** 938.355 (6) (cr) of the statutes is created to read:

2 938.355 (6) (cr) *Indian juvenile; findings.* The court may not order the sanction
3 of placement in a place of nonsecure custody specified in par. (d) 1. for an Indian
4 juvenile who has been found to be in need of protection or services under s. 983.13
5 (4), (6), (6m), or (7) or who has been adjudged to have violated a civil law or ordinance
6 unless the court finds by clear and convincing evidence, including the testimony of
7 one or more qualified expert witnesses, that continued custody of the Indian juvenile
8 by the parent or Indian custodian is likely to result in serious emotional or physical
9 damage to the juvenile under s. 938.028 (4) (d) 1. and that the agency primarily
10 responsible for providing services for the Indian juvenile has made active efforts
11 under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those
12 efforts have proved unsuccessful.

13 **SECTION 283.** 938.355 (6m) (am) 1. of the statutes is amended to read:

14 938.355 (6m) (am) 1. If a juvenile who has violated a municipal ordinance
15 enacted under s. 118.163 (2) violates a condition of a dispositional order imposed by
16 the municipal court, the municipal court may petition the court assigned to exercise
17 jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction
18 specified in par. (a) 1g. A sanction may be imposed under this subdivision only if, at
19 the time of the judgment the municipal court explained the conditions to the juvenile
20 and informed the juvenile of that possible sanction or if before the violation the
21 juvenile has acknowledged in writing that he or she has read, or has had read to him
22 or her, those conditions and that possible sanction and that he or she understands
23 those conditions and that possible sanction. The petition shall contain a statement
24 of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25

1 USC 1911 to 1963, and, if the juvenile may be subject to that act, the names and
2 addresses of the juvenile's Indian custodian, if any, and tribe, if known.

3 **SECTION 284.** 938.355 (6m) (bm) of the statutes is created to read:

4 938.355 **(6m)** (bm) *Indian juvenile; notice.* If the person initiating the motion
5 knows or has reason to know that the juvenile is an Indian juvenile, notice under par.
6 (b) to the Indian juvenile's parent shall be provided in the manner specified in s.
7 938.028 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian
8 custodian and tribe. No hearing may be held under par. (c) until at least 10 days after
9 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe. On
10 request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall
11 grant a continuance of up to 20 additional days to enable the requester to prepare
12 for the hearing.

13 **SECTION 285.** 938.355 (6m) (c) of the statutes is amended to read:

14 938.355 **(6m)** (c) *Sanction hearing.* Before imposing a sanction under par. (a)
15 or (ag), the court shall hold a hearing at which the juvenile is entitled to be
16 represented by legal counsel and to present evidence. The Except as provided in par.
17 (bm), the hearing shall be held within 15 days after the filing of a motion under par.
18 (b).

19 **SECTION 286.** 938.355 (6m) (cr) of the statutes is created to read:

20 938.355 **(6m)** (cr) *Indian juvenile; findings.* The court may not order the
21 sanction of placement in a place of nonsecure custody specified in par. (a) 1g. for an
22 Indian juvenile unless the court finds by clear and convincing evidence, including the
23 testimony of one or more qualified expert witnesses, that continued custody of the
24 Indian juvenile by the parent or Indian custodian is likely to result in serious
25 emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and that the

1 agency primarily responsible for providing services for the Indian juvenile has made
2 active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family
3 and that those efforts have proved unsuccessful.

4 **SECTION 287.** 938.357 (1) (am) 1g. of the statutes is created to read:

5 938.357 (1) (am) 1g. If the juvenile is an Indian juvenile who is in need of
6 protection or services under s. 938.13 (4), (6), (6m), or (7), a notice under subd. 1. shall
7 also contain specific information showing that continued custody of the Indian
8 juvenile by the parent or Indian custodian is likely to result in serious emotional or
9 physical damage to the juvenile under s. 938.028 (4) (d) 1., specific information
10 showing that the agency primarily responsible for implementing the dispositional
11 order has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the
12 Indian family and that those efforts have proved unsuccessful, a statement as to
13 whether the new placement is in compliance with the order of placement preference
14 or, if applicable, (b) s. 938.028 (6) under s. 938.028 (6) (a) and, if the new placement is not in compliance with that order,
15 specific information showing good cause for departing from that order.

16 **SECTION 288.** 938.357 (1) (am) 1m. of the statutes is created to read:

17 938.357 (1) (am) 1m. In a proceeding involving an Indian juvenile who is in
18 need of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under subd.
19 1. to the Indian juvenile's parent, shall be provided in the manner specified in s.
20 938.028 (4) (a). In like manner, the court shall also provide notice of the hearing,
21 together with a copy of the request for the change in placement, to the Indian
22 juvenile's Indian custodian and tribe. No hearing on the request may be held until
23 at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian
24 custodian, and tribe. On request of the Indian juvenile's parent, Indian custodian,

and the juveniles to be placed in the juvenile's or Indian

juvenile who is in need of protection or services under

s. 938.13 (4), (6), (6m), or (7)

or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

SECTION 289. 938.357 (1) (am) 2. of the statutes is amended to read:

938.357 (1) (am) 2. Any person receiving the notice under subd. 1. or notice of a specific foster or treatment foster placement under s. 938.355 (2) (b) 2. may obtain a hearing on the matter by filing an objection with the court within 10 days after receipt of the notice. Placements may not be changed until 10 days after that notice is sent to the court unless the parent, guardian, or legal custodian, or Indian custodian, and the juvenile, if 12 or more years of age, sign written waivers of objection, except that changes in placement that were authorized in the dispositional order may be made immediately if notice is given as required under subd. 1. In addition, a hearing is not required for placement changes authorized in the dispositional order except when an objection filed by a person who received notice alleges that new information is available that affects the advisability of the court's dispositional order.

or, if applicable, (b)

s. 938.029 (6)

SECTION 290. 938.357 (1) (am) 3. of the statutes is amended to read:

938.357 (1) (am) 3. If the court changes the juvenile's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain one of the statements under sub. (2v) (a) 2. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement outside the home to another placement outside the home, the change in placement order shall, in addition, comply with the order of placement preference under s. 938.028 (6) (a) and contain the findings under sub. (2v) (a) 4.

SECTION 291. 938.357 (1) (c) 1m. of the statutes is created to read:

(s. 938.028 (6))
or if applicable (b)

Indian custodian and tribe

938.357 (1) (c) 1m. If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), a request under subd. 1. shall also contain specific information showing that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1., specific information showing that the agency primarily responsible for implementing the dispositional order has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 938.028 (6) (a) and, if the new placement is not in compliance with that order, specific information showing good cause for departing from that order.

SECTION 292. 938.357 (1) (c) 2m. of the statutes is created to read:

938.357 (1) (c) 2m. In a proceeding involving an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under subd. 2. to the Indian juvenile's parent shall be provided in the manner specified in s. 938.028 (4) (a). ~~In like manner, the court shall also provide notice of the hearing, together with a copy of the request for the change in placement, to the Indian juvenile's Indian custodian and tribe.~~ No hearing on the request may be held until at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe. On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

SECTION 293. 938.357 (1) (c) 3. of the statutes is amended to read:

938.357 (1) (c) 3. If the court changes the juvenile's placement from a placement in the juvenile's home to a placement outside the juvenile's home, the change in

or, if applicable, (b)

placement order shall contain the findings under sub. (2v) (a) 1., one of the statements under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the juvenile's home to a placement outside the juvenile's home, the change in placement order shall, in addition, comply with the order of placement preference under s. 938.028 (6) (a) and contain the findings under sub. (2v) (a) 4.

SECTION 294. 938.357 (2m) (a) of the statutes is amended to read:

938.357 (2m) (a) *Request; information required.* The juvenile, the parent, guardian, or legal custodian of the juvenile, or any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, or, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian may request a change in placement under this paragraph. The request shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement. If the proposed change in placement would change the placement of a juvenile placed in the juvenile's home to a placement outside the home, the request shall also contain specific information showing that continued placement of the juvenile in the juvenile's home would be contrary to the welfare of the juvenile and, unless any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the

S. 938.028 (6)

1 paramount concerns. The request shall be submitted to the court. The court may
2 also propose a change in placement on its own motion.

or, if applicable, (b)

3 **SECTION 295.** 938.357 (2m) (am) of the statutes is created to read:

4 938.357 (2m) (am) *Indian juvenile; information required.* If the proposed
5 change of placement would change the placement of an Indian juvenile placed in the
6 juvenile's home under s. 938.357 (4), (6), (6m), or (7) to a placement outside the
7 juvenile's home, a request under par. (a) shall also contain specific information
8 showing that continued custody of the Indian juvenile by the parent or Indian
9 custodian is likely to result in serious emotional or physical damage to the juvenile
10 under s. 938.028 (4) (d) 1., specific information showing that the agency primarily
11 responsible for implementing the dispositional order has made active efforts under
12 s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts
13 have proved unsuccessful, a statement as to whether the new placement is in
14 compliance with the order of placement preference under s. 938.028 (6) (a), and, if the
15 new placement is not in compliance with that order, specific information showing
16 good cause for departing from that order.

17 **SECTION 296.** 938.357 (2m) (b) of the statutes is amended to read:

18 938.357 (2m) (b) *Hearing; when required.* The court shall hold a hearing prior
19 to ordering any change in placement requested or proposed under par. (a) if the
20 request states that new information is available that affects the advisability of the
21 current placement. A hearing is not required if the requested or proposed change in
22 placement does not involve a change in placement of a juvenile placed in the
23 juvenile's home to a placement outside the juvenile's home, written waivers of
24 objection to the proposed change in placement are signed by all parties entitled to
25 receive notice under ~~sub. (1) (am) 1.~~ and the court approves. If a hearing is

this paragraph

a paragraph

1 scheduled, not less than 3 days before the hearing the court shall notify the juvenile,
2 the parent, guardian, and legal custodian of the juvenile, any foster parent,
3 treatment foster parent, or other physical custodian described in s. 48.62 (2) of the
4 juvenile, and all parties who are bound by the dispositional order at least 3 days prior
5 to the hearing, and, if the juvenile is an Indian juvenile who is in need of protection
6 or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian
7 and tribe. A copy of the request or proposal for the change in placement shall be
8 attached to the notice. If all of the parties consent, the court may proceed
9 immediately with the hearing.

10 **SECTION 297.** 938.357 (2m) (bm) of the statutes is created to read:

11 938.357 (2m) (bm) *Indian juvenile; notice.* If the proposed change in placement
12 would change the placement of an Indian juvenile placed in the juvenile's home
13 under s. 938.13 (4), (6), (6m), or (7) to a placement outside the juvenile's home, notice
14 under par. (b) to the Indian juvenile's parent, shall be provided in the manner
15 specified in s. 938.028 (4) (a). ~~In like manner, the court shall also provide notice of~~
16 ~~the hearing, together with a copy of the request or proposal for the change in~~
17 ~~placement, to the Indian juvenile's Indian custodian and tribe.~~ No hearing on the
18 request or proposal may be held until at least 10 days after receipt of the notice by
19 the Indian juvenile's parent, Indian custodian, and tribe. On request of the Indian
20 juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of
21 up to 20 additional days to enable the requester to prepare for the hearing.

22 **SECTION 298.** 938.357 (2m) (c) of the statutes is amended to read:

23 938.357 (2m) (c) *In-home to out-of-home placement; findings required.* If the
24 court changes the juvenile's placement from a placement in the juvenile's home to a
25 placement outside the juvenile's home, the change in placement order shall contain

or, if applicable, (b)

1 the findings under sub. (2v) (a) 1., one of the statements under sub. (2v) (a) 2., and,
2 if in addition the court finds that any of the circumstances under s. 938.355 (2d) (b)
3 1. to 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If
4 the court changes the placement of an Indian juvenile who is in need of protection
5 or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the juvenile's home
6 to a placement outside the juvenile's home, the change in placement order shall, in
7 addition, comply with the order of placement preference under s. 938.028 (6) (a) and
8 contain the findings under sub. (2v) (a) 4.

9 **SECTION 299.** 938.357 (2v) (a) 4. of the statutes is created to read:

10 938.357 (2v) (a) 4. If the change in placement order changes an Indian
11 juvenile's placement from a placement in the Indian juvenile's home under s. 938.13
12 (4), (6), (6m), or (7) to a placement outside the Indian juvenile's home, a finding
13 supported by clear and convincing evidence, including the testimony of one or more
14 qualified expert witnesses, that continued custody of the Indian juvenile by the
15 parent or Indian custodian is likely to result in serious emotional or physical damage
16 to the juvenile under s. 938.028 (4) (d) 1. and a finding supported by clear and
17 convincing evidence that the agency primarily responsible for implementing the
18 dispositional order has made active efforts under s. 938.028 (4) (d) 2. to prevent the
19 breakup of the Indian family and that those efforts have proved unsuccessful.

20 **SECTION 300.** 938.357 (2v) (c) 1. of the statutes is renumbered 938.357 (2v) (c)
21 and amended to read:

22 938.357 (2v) (c) If the court finds under par. (a) 3. that any of the circumstances
23 under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold
24 a hearing under s. 938.38 (4m) within 30 days after the date of that finding to
25 determine the permanency plan for the juvenile. ~~If a hearing is held under this~~

1 paragraph, the agency responsible for preparing the permanency plan shall file the
2 permanency plan with the court at least 5 days before the date of the hearing.

3 SECTION 301. 938.357 (2v) (c) 2. of the statutes is repealed.

4 SECTION 302. 938.357 (2v) (c) 3. of the statutes is repealed.

5 SECTION 303. 938.363 (1) (a) of the statutes is amended to read:

6 938.363 (1) (a) A juvenile, the juvenile's parent, guardian, or legal custodian,
7 any person or agency bound by a dispositional order, or the district attorney or
8 corporation counsel in the county in which the dispositional order was entered or, if
9 the juvenile is an Indian juvenile who is in need of protection or services under s.
10 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian may request a
11 revision in the order that does not involve a change in placement, including a revision
12 with respect to the amount of child support to be paid by a parent. The court may
13 also propose a revision. The request or court proposal shall set forth in detail the
14 nature of the proposed revision and what new information is available that affects
15 the advisability of the court's disposition. The request or court proposal shall be
16 submitted to the court. The court shall hold a hearing on the matter prior to any
17 revision of the dispositional order if the request or court proposal indicates that new
18 information is available that affects the advisability of the court's dispositional order,
19 unless written waivers of objections to the revision are signed by all parties entitled
20 to receive notice and the court approves.

21 SECTION 304. 938.363 (1) (b) of the statutes is amended to read:

22 938.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court
23 shall notify the juvenile, the juvenile's parent, guardian, and legal custodian, all
24 parties bound by the dispositional order, the juvenile's foster parent, treatment
25 foster parent, or other physical custodian described in s. 48.62 (2), ~~and~~ the district

1 attorney or corporation counsel in the county in which the dispositional order was
2 entered at least 3 days prior to the hearing and, if the juvenile is an Indian juvenile
3 who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian
4 juvenile's Indian custodian and tribe. A copy of the request or proposal shall be
5 attached to the notice. If all parties consent, the court may proceed immediately with
6 the hearing. No revision may extend the effective period of the original order, or
7 revise an original order under s. 938.34 (3) (f) or (6) (am) to impose more than a total
8 of 30 days of detention, nonsecure custody, or inpatient treatment on a juvenile.

9 **SECTION 305.** 938.365 (1m) of the statutes is amended to read:

10 938.365 (1m) REQUEST FOR EXTENSION. The parent, juvenile, guardian, legal
11 custodian, any person or agency bound by the dispositional order, the district
12 attorney or corporation counsel in the county in which the dispositional order was
13 entered, ~~or~~ the court on its own motion, or, if the juvenile is an Indian juvenile who
14 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian
15 juvenile's Indian custodian may request an extension of an order under s. 938.355.
16 The request shall be submitted to the court ~~which~~ that entered the order. An order
17 under s. 938.355 for placement of a juvenile in detention, nonsecure custody, or
18 inpatient treatment under s. 938.34 (3) (f) or (6) (am) may not be extended. Other
19 orders or portions of orders under s. 938.355 may be extended only as provided in this
20 section.

21 **SECTION 306.** 938.365 (2) of the statutes is amended to read:

22 938.365 (2) NOTICE. No order may be extended without a hearing. The court
23 shall ~~notify~~ provide notice of the time and place of the hearing to the juvenile or the
24 juvenile's guardian ad litem or counsel, the juvenile's parent, guardian, and legal
25 custodian, all of the parties present at the original hearing, the juvenile's foster

1 parent, treatment foster parent or other physical custodian described in s. 48.62 (2),
2 and the district attorney or corporation counsel in the county in which the
3 dispositional order was entered ~~of the time and place of the hearing, and, if the~~
4 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
5 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian.

6 **SECTION 307.** 938.365 (2g) (b) 4. of the statutes is created to read:

7 938.365 (2g) (b) 4. If the juvenile is an Indian juvenile who is placed outside
8 the home under s. 938.13 (4), (6), (6m), or (7), specific information showing that active
9 efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian
10 family and that those efforts have proved unsuccessful.

11 **SECTION 308.** 938.365 (2m) (a) 1. of the statutes is amended to read:

12 938.365 (2m) (a) 1. Any party may present evidence relevant to the issue of
13 extension. If the juvenile is placed outside of his or her home, the person or agency
14 primarily responsible for providing services to the juvenile shall present as evidence
15 specific information showing that the person or agency has made reasonable efforts
16 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile
17 to the home is the goal of the permanency plan and any of the circumstances under
18 s. 938.355 (2d) (b) 1. to 4. applies. If an Indian juvenile is placed outside the home
19 under s. 938.13 (4), (6), (6m), or (7), the person or agency primarily responsible for
20 providing services to the Indian juvenile shall also present as evidence specific
21 information showing that the person or agency has made active efforts under s.
22 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts
23 have proved unsuccessful.

24 1m. The court shall make findings of fact and conclusions of law based on the
25 evidence. The findings of fact shall include a finding as to whether reasonable efforts

1 were made by the agency primarily responsible for providing services to the juvenile
2 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile
3 to the home is the goal of the permanency plan and the court finds that any of the
4 circumstances under s. 938.355 (2d) (b) 1. to 4. applies. If the juvenile is an Indian
5 juvenile who is placed outside the home under s. 938.13 (4), (6), (6m), or (7), the
6 findings of fact shall also include a finding as to whether active efforts under s.
7 938.028 (4) (d) 2. were made to prevent the breakup of the Indian family and as to
8 whether those efforts have proved unsuccessful. An order shall be issued under s.
9 938.355.

10 **SECTION 309.** 938.365 (2m) (a) 3. of the statutes is amended to read:

11 938.365 (2m) (a) 3. The court shall make the findings under subd. 1. 1m.
12 relating to reasonable efforts to achieve the goal of the juvenile's permanency plan
13 and the findings under subd. 2. on a case-by-case basis based on circumstances
14 specific to the juvenile and shall document or reference the specific information on
15 which those findings are based in the order issued under s. 938.355. An order that
16 merely references subd. 1. 1m. or 2. without documenting or referencing that specific
17 information in the order or an amended order that retroactively corrects an earlier
18 order that does not comply with this subdivision is not sufficient to comply with this
19 subdivision.

20 **SECTION 310.** 938.365 (2m) (ad) 1. of the statutes is renumbered 938.365 (2m)
21 (ad) and amended to read:

22 938.365 (2m) (ad) If the court finds that any of the circumstances under s.
23 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing
24 under s. 938.38 (4m) within 30 days after the date of that finding to determine the
25 permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~

1 ~~agency responsible for preparing the permanency plan shall file the permanency~~
2 ~~plan with the court not less than 5 days before the date of the hearing.~~

3 **SECTION 311.** 938.365 (2m) (ad) 2. of the statutes is repealed.

4 **SECTION 312.** 938.365 (2m) (ag) of the statutes is amended to read:

5 938.365 (2m) (ag) The court shall give a foster parent, treatment foster parent,
6 or other physical custodian described in s. 48.62 (2) who is notified of a hearing under
7 ~~par. (ad) 2. or~~ sub. (2) an opportunity to be heard at the hearing by permitting the
8 foster parent, treatment foster parent, or other physical custodian to make a written
9 or oral statement during the hearing, or to submit a written statement prior to the
10 hearing, relevant to the issue of extension. A foster parent, treatment foster parent,
11 or other physical custodian who receives notice of a hearing under ~~par. (ad) 2. or~~ sub.
12 (2) and an opportunity to be heard under this paragraph does not become a party to
13 the proceeding on which the hearing is held solely on the basis of receiving that notice
14 and having the opportunity to be heard.

15 **SECTION 313.** 938.38 (3) (intro.) of the statutes is amended to read:

16 938.38 (3) TIME. (intro.) Subject to s. 938.355 (2d) (c) ~~1.~~, the agency shall file
17 the permanency plan with the court within 60 days after the date on which the
18 juvenile was first removed from his or her home, except under either of the following
19 conditions:

20 **SECTION 314.** 938.38 (4) (i) of the statutes is created to read:

21 938.38 (4) (i) If the juvenile is an Indian juvenile who is in need of protection
22 or services under s. 938.13 (4), (6), (6m), or (7), all of the following:

23 1. The name, address, and telephone number of the Indian juvenile's Indian
24 custodian and tribe.

or, if applicable, (c)

2. A description of the remedial services and rehabilitation programs offered under s. 938.028 (4) (d) 2. in an effort to prevent the breakup of the Indian family.

3. A statement as to whether the Indian juvenile's placement is in compliance with the order of placement preference specified in s. 938.028 (6) (a) and, if the placement is not in compliance with that order, an explanation for the departure from that order.

SECTION 315. 938.38 (4m) of the statutes is created to read:

938.38 (4m) PERMANENCY PLAN DETERMINATION HEARING. (a) If in a proceeding under s. 938.21, 938.32, 938.355, 938.357, or 938.365 the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the juvenile. If a hearing is held under this paragraph, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

(b) At least 10 days before the date of the hearing the court shall notify the juvenile, any parent, guardian, and legal custodian of the juvenile, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile of the time, place, and purpose of the hearing.

(c) If the court knows or has reason to know that the juvenile is an Indian juvenile who is or is alleged to be in need of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under par. (b) to the Indian juvenile's parent shall be provided in the manner specified in s. 938.028 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian custodian and tribe. No hearing may be held under par. (a) until at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe. On request of the Indian juvenile's parent, Indian

1 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
2 to enable the requester to prepare for the hearing.

3 (d) The court shall give a foster parent, treatment foster parent, or other
4 physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (b)
5 an opportunity to be heard at the hearing by permitting the foster parent, treatment
6 foster parent, or other physical custodian to make a written or oral statement during
7 the hearing, or to submit a written statement prior to the hearing, relevant to the
8 issues to be determined at the hearing. The foster parent, treatment foster parent,
9 or other physical custodian does not become a party to the proceeding on which the
10 hearing is held solely on the basis of receiving that notice and having the opportunity
11 to be heard.

12 **SECTION 316.** 938.38 (5) (b) of the statutes is amended to read:

13 938.38 (5) (b) The court or the agency shall notify ~~the parents of the juvenile,~~
14 the juvenile, if he or she is 10 years of age or older, ~~and; the juvenile's parent,~~
15 ~~guardian, and legal custodian;~~ the juvenile's foster parent, the juvenile's treatment
16 foster parent, the operator of the facility in which the juvenile is living, or the relative
17 with whom the juvenile is living; and, if the juvenile is an Indian juvenile who is in
18 need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's
19 Indian custodian and tribe of the date, time, and place of the review, of the issues to
20 be determined as part of the review, and of the fact that they may have an opportunity
21 to be heard at the review by submitting written comments not less than 10 working
22 days before the review or by participating at the review. The court or agency shall
23 notify the person representing the interests of the public, the juvenile's counsel, and
24 the juvenile's guardian ad litem of the date of the review, of the issues to be
25 determined as part of the review, and of the fact that they may submit written

1 comments not less than 10 working days before the review. The notices under this
 2 paragraph shall be provided in writing not less than 30 days before the review and
 3 copies of the notices shall be filed in the juvenile's case record.

4 **SECTION 317.** 938.38 (5) (bm) of the statutes is created to read:

5 938.38 (5) (bm) If the juvenile is an Indian juvenile who is in need of protection
 6 or services under s. 938.13 (4), (6), (6m), or (7), notice under par. (b) to the Indian
 7 juvenile's parent, Indian custodian, and tribe shall be provided in the manner
 8 specified in s. 938.028 (4) (a). No review may be held until at least 10 days after
 9 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe. On
 10 request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall
 11 grant a continuance of up to 20 additional days to enable the requester to prepare
 12 for the review.

13 **SECTION 318.** 938.38 (5) (c) 8. of the statutes is created to read:

14 938.38 (5) (c) 8. If the juvenile is an Indian juvenile who is in need of protection
 15 or services under s. 938.13 (4), (6), (6m), or (7), whether active efforts under s. 938.028
 16 (4) (d) 2. were made by the agency to prevent the breakup of the Indian family and
 17 whether those efforts have proved unsuccessful.

18 **SECTION 319.** 938.38 (5) (d) of the statutes is amended to read:

19 938.38 (5) (d) Notwithstanding s. 938.78 (2) (a), the agency that prepared the
 20 permanency plan shall, at least 5 days before a review by a review panel, provide to
 21 each person appointed to the review panel, the juvenile's parent, guardian, and legal
 22 custodian, the person representing the interests of the public, the juvenile's counsel
 23 and, the juvenile's guardian ad litem, and, if the juvenile is an Indian juvenile who
 24 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian
 25 juvenile's Indian custodian and tribe a copy of the permanency plan and any written

whether the Indian child's placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), and if the placement is not in compliance with that order, whether there is good cause for departure from that order

1 comments submitted under par. (b). Notwithstanding s. 938.78 (2) (a), a person
2 appointed to a review panel, the person representing the interests of the public, the
3 juvenile's counsel and, the juvenile's guardian ad litem, and, if the juvenile is an
4 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
5 or (7), the Indian juvenile's Indian custodian and tribe may have access to any other
6 records concerning the juvenile for the purpose of participating in the review. A
7 person permitted access to a juvenile's records under this paragraph may not disclose
8 any information from the records to any other person.

9 **SECTION 320.** 938.38 (5) (e) of the statutes is amended to read:

10 938.38 (5) (e) Within 30 days, the agency shall prepare a written summary of
11 the determinations under par. (c) and shall provide a copy to the court that entered
12 the order; the juvenile or the juvenile's counsel ~~or~~, guardian ad litem; the person
13 representing the interests of the public; the juvenile's parent ~~or~~, guardian and, or
14 legal custodian; the juvenile's foster parent, the juvenile's treatment foster parent,
15 or the operator of the facility where the juvenile is living; and, if the juvenile is an
16 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
17 or (7), the Indian juvenile's Indian custodian and tribe.

18 **SECTION 321.** 938.38 (5m) (b) of the statutes is amended to read:

19 938.38 (5m) (b) Not less than 30 days before the date of the hearing, the court
20 shall notify the juvenile; the juvenile's parent, guardian, and legal custodian; the
21 juvenile's foster parent or treatment foster parent, the operator of the facility in
22 which the juvenile is living, or the relative with whom the juvenile is living; the
23 juvenile's counsel, and the juvenile's guardian ad litem; the agency that prepared the
24 permanency plan; and the person representing the interests of the public; and, if the
25 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13

1 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe of the date, time,
2 and place of the hearing.

3 **SECTION 322.** 938.38 (5m) (bm) of the statutes is created to read:

4 938.38 (5m) (bm) If the juvenile is an Indian juvenile who is in need of
5 protection or services under s. 938.13 (4), (6), (6m), or (7), notice under par. (b) to the
6 Indian juvenile's parent, Indian custodian, and tribe shall be provided in the manner
7 specified in s. 938.028 (4) (a). No hearing under par. (a) may be held until at least
8 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian,
9 and tribe. On request of the Indian juvenile's parent, Indian custodian, or tribe, the
10 court shall grant a continuance of up to 20 additional days to enable the requester
11 to prepare for the hearing.

12 **SECTION 323.** 938.38 (5m) (d) of the statutes is amended to read:

13 938.38 (5m) (d) At least 5 days before the date of the hearing the agency that
14 prepared the permanency plan shall provide a copy of the permanency plan and any
15 written comments submitted under par. (c) to the court, to the juvenile's parent,
16 guardian, and legal custodian, to the person representing the interests of the public,
17 and to the juvenile's counsel or guardian ad litem, and, if the juvenile is an Indian
18 juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7),
19 to the Indian juvenile's Indian custodian and tribe. Notwithstanding s. 938.78 (2)
20 (a), the person representing the interests of the public and, the juvenile's counsel or
21 guardian ad litem, and, if the juvenile is an Indian juvenile who is in need of
22 protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian
23 custodian and tribe may have access to any other records concerning the juvenile for
24 the purpose of participating in the review. A person permitted access to a juvenile's

1 records under this paragraph may not disclose any information from the records to
2 any other person.

3 **SECTION 324.** 938.38 (5m) (e) of the statutes is amended to read:

4 938.38 (5m) (e) After the hearing, the court shall make written findings of fact
5 and conclusions of law relating to the determinations under sub. (5) (c) and shall
6 provide a copy of those findings of fact and conclusions of law to the juvenile; the
7 juvenile's parent, guardian, and legal custodian; the juvenile's foster parent or
8 treatment foster parent, the operator of the facility in which the juvenile is living,
9 or the relative with whom the juvenile is living; the agency that prepared the
10 permanency plan; ~~and the person representing the interests of the public; and, if the~~
11 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
12 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe. The court shall
13 make the findings specified in sub. (5) (c) 7. on a case-by-case basis based on
14 circumstances specific to the juvenile and shall document or reference the specific
15 information on which those findings are based in the findings of fact and conclusions
16 of law prepared under this paragraph. Findings of fact and conclusions of law that
17 merely reference sub. (5) (c) 7. without documenting or referencing that specific
18 information in the findings of fact and conclusions of law or amended findings of fact
19 and conclusions of law that retroactively correct earlier findings of fact and
20 conclusions of law that do not comply with this paragraph are not sufficient to comply
21 with this paragraph.

22 **SECTION 325.** 938.38 (6) (cm) of the statutes is created to read:

23 938.38 (6) (cm) Standards for active efforts under s. 938.028 (4) (d) 2. to prevent
24 the breakup of the family of an Indian juvenile who is in need of protection or services
25 under s. 938.13 (4), (6), (6m), or (7).

SECTION 326. Effective dates. This act takes effect on the day after publication, except as follows:

(1) ADOPTIVE PLACEMENT OF INDIAN CHILD. The repeal and recreation of section 48.833 of the statutes takes effect on April 1, 2007, or on the day after publication, whichever is later.

(END)